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COMPARISON OF SAMPLE CLAUSES FOR CONTRACTS BETWEEN CLIENTS AND INDUSTRIAL ARCHITECTS FOR THE DESIGN AND SUPERVISION OF THE CONSTRUCTION OF WORKS FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY*

Prepared by

Ruth Fitz Gerald
UNIDO Consultant

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The purpose of this document is to draw together the various types and versions of the clauses contained in drafts and precedents of the contract under consideration. It is essentially a research document, drawing on existing material and not seeking to furnish any new ideas on the possible approaches to issues in contractual relations.

The headings of the contract clauses dealt with in this document appear in the middle column of the "Contents" on the next page. The clause numbers are given in the right hand column. Reference is then made in the left hand column to the "Status" of the clauses considered. The letters "N", "R" and "O" stand for "Necessary", "Recommended" and "Optional" respectively. This classification indicates the degree of importance attached to the inclusion in the contract of a clause dealing with the issue raised in the corresponding clause heading. Thus, it is felt, a clause whose heading is assigned the status "Necessary" should appear in some form in the contract, even if it is not included in terms of any of the examples provided in this document.

On the page following the "Contents" there is an example of the preamble sometimes included in contracts. The recitals contained in a preamble serve to describe, if very briefly, the setting and conditions in which the agreement between the parties has been concluded. Under legal systems which take preambles into account, these can be of assistance in interpreting the clauses of contracts should a dispute later arise. Some legal systems, however, ignore the recitals contained in the preamble to a contract.

The major part of this document is given over to samples of the clauses which can be included in the contract under consideration. The examples appear in tabulated form. In some instances only one example is given of the possible terms of a clause dealing with the issue raised in the clause heading (left hand column of the table), in others two or three examples are provided. The fifth column, headed "Additions", contains extra material which supplements rather than replaces the examples given of a particular clause. The last column of the tables indicates, in abbreviated form, the sources from which the examples and additions have been generally drawn. The sources referred to above are set out in full in the last page of this document.

As recommended by the Second Consultation on the Agricultural Machinery Industry, the sources drawn from include the documentation considered by that Consultation, the views expressed on it, other relevant national and international material, the views of the participants in the Consultation and other interested parties and the experience gained by the Secretariat in work on contractual agreements.

Clause	Heading	Status
1	Definitions	R
2	Substantive Transaction	N
3	Scope of Services or Terms of Reference	N
4	Entry into Force, Commencement and Completion of the Contract	N
5	Rights and Duties of the Industrial Architect	N
6	Obligations of the Client	N
7	Personnel	N
8	Industrial Architect's Failure to Perform	N
9	Limitation of Industrial Architect's Liability	O
10	Client's Failure to Perform	N
11	Force Majeure	R
12	Alterations	R
13	Remuneration of the Industrial Architect	N
14	Performance Security	O
15	Insurance	R
16	Assignment	R
17	Sub-Contracting	O
18	Copyright	R
19	Postponement and Termination	R
20	End of Contract	R
21	Death of Client	O
22	Partnerships	O
	Status	O
	Language	R
	Applicable Standards	R
	Notices	O
	Settlement of Disputes	N
	Applicable Law	N

THIS AGREEMENT is made BETWEEN OF (herein-after called "client") and OF (hereinafter called "the industrial architect")

WHEREAS:

1. The client is desirous of erecting a facility for the assembly, manufacture, supply, maintenance and repair of agricultural machinery in his/her own country.

2. The industrial architect has for some time in his/her professional capacity provided the necessary design, engineering, construction management and co-ordination and supervision services for the design, construction and establishment of assembly and manufacturing facilities and has acquired all the specialized and up to date knowledge and skills therfor.

3. The client is desirous of appointing the industrial architect to provide the said services in the design, construction and establishment of the said assembly and manufacturing facility.

4. The industrial architect is aware that the client has not available to him/her in his/her own country a tradition in industry and, further, the industrial architect is mindful that the consummation of this agreement is intended to aid and be in the interest of the industrial and economic development of the client's country.

Now, in CONSIDERATION of the premises and of the mutual covenants and condtions herein contained the parties here to have agreed and do by these presents agree as follows:

HEADINGS	EXAMPLE I	EXAMPLE II
Definitions 1. R.	For the purposes of this contract the following terms shall be interpreted thus: -"contract" - this agreement including all the appendices and attachments hereto and all documents referred to in this contract. Words importing the singular only also include the plural where the context so admits.	
Substantive Transaction 2. N.	Subject to the terms of this contract the industrial architect will perform the work and services hereinafter specified in the design and supervision of the construction of works for the assembly and manufacture of agricultural equipment in consideration of the payment to him by the client of the remuneration hereinafter set forth.	
Scope of Services or Terms of Reference 3. N.	The industrial architect will provide basic design engineering services comprising the preliminary design and detailed design and will supervise the construction of the works, giving advice, inter alia, on the tendering or bidding and award of contracts. The industrial architect will provide drawings, specifications, other contract documents and all necessary services to ensure the proper planned co-ordination and execution of all the building and infrastructure works required in the construction of the said works.	

EXAMPLE III	ADDITIONS	SOURCE
	Add. 1.3. The industrial architect will provide pre-design engineering services consisting of the engineering necessary to establish feasibility and design criteria, such as functional designs, feasibility studies, topographical and other surveys, negotiations regarding services and utilities and soil investigations. The industrial architect will provide detailed cost and time estimates as part of his feasibility report. Further, the industrial architect will provide basic design engineering services ... (see Ex I).	Add. 3.I FIDIC Guide Ex.I 3. FIDIC Guide + ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II
	More particularly, the industrial architect will: (a) Prepare drawings, detailed specifications and documents of the building and infrastructure works required for the construction of the works (... on the basis of the general designs and capacity requirements set out in Annex ...of this contract OR ... on the basis of the design for the works submitted by the industrial architect under this Clause (Add) and approved by the client). (b) (i)Prepare the drawings, engineering documents and calculations required for the formal approval of any appropriate Government department or public authority to the construction of the plant.	

EXAMPLE III	ADDITIONS	SOURCE
	Add. II 3. More particularly, the industrial architect will: (.000)Prepare such preliminary drawings estimates and other engineering documents to enable the proposals for the construction of the plant to be submitted for approval by the client, including, as may be necessary: (i) a topographical survey of the proposed site of the works; (ii)an investigation report fo the available data or information relating to the works. (. 00) Advise the client as to the necessity for special investigations of the conditions of the sub-soil, tide or weather and arrange, on the client's behalf and at his cost, for boring tests, trial pits, test piling, models or other investigations agreed to be necessary. (. 0)Consult with any arcbitect appointed by the client regarding any architectural matters related to the plant and with any other consultant appointed by the client in regard to specialized advice. The industrial architect will make such mcdifications in the outline of the plant arising out of the said consultations as may be approved by the client. (continue (a),(b),(c) etc. Ex. I)	Add. 3 II FIDIC Guide

HEADINGS	EXAMPLE I	EXAMPLE II
	(ii) Prepare the drawings, engineering documents and calculations concerning the connection of the plant to utilities, specifying the amount of electricity, natural gas, fuel oil, industrial water and drinking water which will be required for the operation of the works to enable applications to be made for the connections to the utilities which the plant will require. (c)(i) Prepare the drawings, specifications, schedules, bills of quantities and other documents concerning the works to be tendered for containing details of: - the general layout and design - specifications for the buildings - internal transport routes and the arrangement of the main supply channels - specifications for the necessary connecting pipes, quantities of water required, etc. - requirements of the road and rail connections - requirements in respect of the internal distribution of electricity, water, gas and compressed air - details on the requirements of materials handling - requirements in respect of lifting capacity and top limit of lifting machinery - requirements in respect of lighting, fire protection, air conditioning, ventilation, heating, waste removal, environmental factors, soil quality etc. - information on the foundations required to take the weight of the production equipment. (ii) Draft or adapt conditions of contract, forms of tender and invitations to tender and submit the same for approval by the client. (iii) Advise the client as to the suitability of persons and firms (contractors) who should be invited to tender for the building and infrastructure works.	

EXAMPLE III	ADDITIONS	SOURCE

HEADINGS	EXAMPLE I	EXAMPLE II
	(d)(i) Compile a detailed report of the tenders received, summarizing his recommendations and indicating those contractors whose tenders he considers should be accepted. (ii) Advise the client in the preparation of the contracts with the contractors with particular regard to the provisions dealing with quality standards, guarantees, delivery dates, prices and credit terms. (e) Examine the contractors' proposals, drawings and calculations checking these for consistency and conformity with the specifications and approve the same. (f) Review the proposed contracts with the contractors to ensure that these contain all the provisions necessary to regulate his relations with the contractors and so as to enable him to carry out his duties in accordance with this contract. (g) Prepare any further plans, drawings or designs necessary for the carrying out of the works in the light of the contractors' proposals. (h) Ensure that there is a clear, unambiguous division of responsibilities between himself and the contractors both in respect of the work itself and in respect of ancillary matters such as the measures required to prevent any damage or loss to the site, buildings or equipment etc. (i) Provide the contractors with further details and drawings, such as those for the foundations, trenches, conduits, bed plates, sockets for posts, openings for installations of equipment etc.,as and when required. (j) Supervise and direct the infrastructure and building works for the works, co-ordinating the tasks and assignments to be performed, issuing instructions to the contractors and making regular visits to the site to verify that the construction and installation works are being carried out in accordance with the specifications and drawings provided that the industrial architect shall not	

EXAMPLE III	ADDITIONS	SOURCE

HEADINGS	EXAMPLE I	EXAMPLE II
	without the prior written consent of the client, give any instruction which, in the opinion of the industrial architect, is likely substantially to increase the cost of the works unless it is not practicable in the circumstances for him to obtain such prior written consent. (k) Monitor the contractors' work and verify that the works are being carried out in conformity with the contractors' contracts with the client. In particular, the industrial architect will: (i) inspect the materials used and verify their conformity with the specifications, the contractors' contracts with the client and the rules of the art, and, (ii)verify that the work is progressing according to the time schedule detailed in the contractors' contracts with the client. Where necessary, the industrial architect will inform the client of any lack of conformity. (l) Take such action or direct the contractors to take such action as may be necessary to remedy any lack of conformity in the works carried out by the contractors. The industrial architect will advise the client as to the appropriate implementation, if any, of the sanctions contained in the contracts between the client and the contractors. (m) Make such site visits and carry out such tests as may be necessary to satisfy himself that the works are being constructed properly. Inter alia, the industrial architect will: - verify the surveyor's determination of the reference axes of the installations - check the installation works of the contractors and the reference levels in the course of work - draft, compile and transmit to the contractors the service orders for the commencement of their work and whenever any changes in the course of their work become necessary	

EXAMPLE III	ADDITIONS	SOURCE

HEADINGS	EXAMPLE I	EXAMPLE II
	- monitor the materials used and the composition of the aggregates and the concrete for the masonry work - check the tests carried out on the materials used in specialized laboratories - prepare and keep up to date all the administrative documents, records and regulations relating to the site - draft the site safety regulations and oversee the observance of discipline and safety regulations on the site - arrange and direct periodic meetings on the site and produce and distribute records of those meetings.	
	(n) When the industrial architect shall that an integral part of works has been completed in a manner which the industrial architect deems is capable of being accepted he shall give ... hours/days prior written notice to the client that such an integral part is ready for tests. Tests shall be carried out under the supervision of the industrial architect. The tests to be carried out are these which the industrial architect specifies as necessary to determine the quality, standards and capacity of the said works and those reasonably requested by the client.	).(n) The industrial architect will make arrangements for acceptance tests of completed works to be carried out on site.
	(o) Upon completion of the tests mentioned at sub-paragraph(n) of this Clause the industrial architect will, if he is satisfied by the results of the said tests, execute a certificate recommending acceptance to the client. Minor deficiencies shall not delay acceptance and the client shall take all certified completed works under his care, control and custody.	(o)(i) When the industrial architect deem that an integral part of the works has been completed in a manner which the industrial architect deems capable of being accepted, that is to say on satisfactory results being achieved in site tests, the industrial architect, acting as the client's representative and jointly with the contractors, shall execute a certificate of completion and delivery in respect of the building work in question.

EXAMPLE III	ADDITIONS	SOURCE
	Add. III 3. The industrial architect will make arrangements on behalf of the client and at his cost for the inspection and testing during manufacture of such materials and plant as are usually inspected and tested.	Add. III. 3. FIDIC Guide Ex. II 3.(n).(o) FIDIC Guide

HEADINGS	EXAMPLE I	EXAMPLE II
		(ii) the purposes of the said certificates shall be limited to testifying: - that the part of the works in question has been completed, and - that the works certified conform to the specifications and to the contracts between the contractors and the client, and of effecting delivery to the client of the works so certified. The said certificates shall not affect the rights and liabilities between the industrial architect and the client.
	(p) The industrial architect shall furnish the client with progress reports/certificates of the works carried out by the contractors, specifying any breach of the contractors' contract with the client which have taken place either in regard to the quality or standards of the materials and work involved or in respect of any delays. The industrial architect will also specify the consequent loss or damage if any, arising out of such breaches of contract by the contractors. The said progress reports/certificates shall be furnished by the industrial architect to the client at such times as will coincide with each step of payment described in the Schedule of Payments in the contractors' contracts with the client which is referrable to such progress reports/certificates. (q) Advise the client on the appointment of site staff in accordance with Clause 7 hereunder. (r) Assist in setting disputes or differences that may arise between the client and contractors excepting litigation and arbitration. (s) On completion of the works, deliver to the client such records, documents, drawings and specifications as are reasonably necessary to enable the client to operate and maintain the works.	

EXAMPLE III	ADDITIONS	SOURCE

HEADINGS	EXAMPLE I	EXAMPLE II
ENTRY INTO FORCE, COMMENCEMENT AND COMPLETION OF THE CONTRACT 4. N	1. This contract will come into force immediately on its signature by both parties or, if signed separately, on the signature by the last subscribing party. 2. The industrial architect shall commence rendering the services contracted for within .... days/weeks of the entry into force of this contract. 3. The said services shall be completed within .... weeks/months of the commencement of their provision.	4.1.(a) The industrial architect shall commence rendering the services contracted for at subparagraphs "Add.I and II" of Clause 3 of this contract within ··· days/weeks of the entry into force of this contract. (b) The said services described at subparagraphs "Add.I and II" of Clause 3 shall be completed within ..... weeks/months of the commencement of the provision of the said services. (c) The industrial architect shall commence rendering the services contracted for at Clause 3 of this contract within ..... days/weeks of the client's approval of the scheme submitted by the industrial architect under subparagraphs "Add. I and II" of Clause 3 provided that the client's final approval shall not be withheld for an unreasonable period of time. 3. The said services described at Clause 3 of this contract shall be completed within ···· weeks/months of the commencement of their provision.
RIGHTS AND DUTIES OF THE INDUSTRIAL ARCHITECT 5. N	1. The industrial architect shall exercise all reasonable skill, care and diligence in the performance of the services under this contract and shall carry out all his responsibilities in accordance with recognized professional standards. 2. The industrial architect shall in all professional matters act as a faithful adviser to the client and, in so far as any of his duties are discretionary, act fairly as between the client and third parties.	

EXAMPLE III	ADDITIONS	SOURCE
	Add. IV. 3. - Prepare feasibility studies and designs relating to future facilities, systems and equipment at the request of the client in consideration of the payment of a fee of ..... (OR: ... as may be agreed between the parties)	Add IV 3. FIDIC Guide ExI+II 4 ECE/145 + FIDIC
		EX I 5. FIDIC

HEADINGS	EXAMPLE I	EXAMPLE II
	3. The industrial architect, his employees and sub-contractors, whilst in the country in which the works are to be carried out, shall respect the laws and customs of that country. 4. The remuneration of the industrial architect charged to the client in accordance with this contract shall constitute his only remuneration in connection with this contract and neither he nor his personnel shall accept any commission, discount, allowance, indirect payment, benefit or other consideration in connection with in relation to this contract or to the or discharge of his obligations hereunder. 5. The industrial architect shall not have the benefit, whether directly or indirectly, of any royalty on or of any gratuity or commission in respect of any patented or protected article or process used on or for the purposes of this contract unless it is mutually agreed in writing that he may. 6. The industrial architect will provide all the expert technical advice and skills which are normally required for the class of services for which he is engaged. Where specialist technical advice or assistance is required, beyond that committed under Clause 3 of this contract, the industrial architect may, with the prior written agreement of the client, arrange for the provision of such services. The client shall be liable to pay for all such services. Notwithstanding the client's liability to pay for such services or his written agreement to the provision thereof, the industrial architect shall retain full and unseverable responsibility for all the services which he is committed to render under this 7. The industrial architect shall have authority, in the course of his supervision of the works under construction, to make minor alterations to the design thereof as may be necessary or expedient but he shall obtain the prior written approval of the client to any substantial modification of the design and costs of	

EXAMPLE III	ADDITIONS	SOURCE

HEADINGS	EXAMPLE I	EXAMPLE II
	the said works and to any instruction to a contractor which constitutes a major variation, omission or addition to the latter's contract. In the event of an emergency, however, which in the opinion of the industrial architect requires immediate action in the client's interest, the industrial architect shall have authority to issue such orders as are required on behalf of and at the expense of the client. The industrial architect must inform the client immediately of any orders issued without prior consent which will result in additional costs to the client and he shall follow-up such notification with an estimate of the probable cost as soon as possible. 8. The industrial architect shall not be the medium of payments made on behalf of the client to contractors and/or suppliers unless specifically so requested to be by the client. He will, however, issue progress reports/certificates for such payments. 9. Equipment and/or materials furnished to the industrial architect by the client or purchased by the industrial architect with funds wholly supplied or reimbursed by the client shall be the property of the client and shall be so marked. Upon completion or termination of the services the industrial architect shall furnish to the client inventories of the equipment and materials referred to above as they then remain and shall dispose of the same as directed by the client. 10. The industrial architect shall have the right, subject to the client's approval, which shall not be unreasonably withheld, to publish descriptive articles with or without illustrations, with respect to the services either on his own account or in conjunction with other parties concerned. 11. Save as hereinbefore provided, the code of ethics/conduct of the industrial architect's association shall apply to this contract in respect of the industrial architect's professional obligations.	5.11. In so far as the code of ethics/conduct of the industrial architect's association enlarges the industrial architect's liability to the client as hereinbefore described, the same shall apply to this contract in respect of the industrial architect's professional obligations.

EXAMPLE III	ADDITIONS	SOURCE
		Ex.I+II 5.11 ECE/145

HEADINGS	EXAMPLE I	EXAMPLE II
OBLIGATIONS OF THE CLIENT 6. N.	1. The client will place the site for the said works at the disposal of the industrial architect in its present condition from such a date as the industrial architect directs. 2. Within ...weeks/months of the client's receipt of all the documents, drawings and specifications required for applications for administrative permits to be made, furnished by the industrial architect pursuant to subparagraph (b) of Clause 3, the client will obtain all the necessary permits for the carrying out of the building and infrastructure works. Further, within the periods specified hereafter for each utility, from the date upon which all the drawings, documents and specifications required for applications for connection have been furnished by the industrial architect to the client pursuant to sub-paragraph (b) of Clause 3, the client will obtain the connection of the site to the following utilities: - road ..... months - water supply for building works ..... months - industrial water supply ..... months - waste supply ..... months - electricity supply for building works ..... months - electricity supply for production ..... months - gas ..... months - telecommunications for the site ..... months - telecommunications for the plant .... months 3. The client shall furnish without charge and within a reasonable time all pertinent data and information available to him and shall give such assistance as shall reasonably be required by the industrial architect for the carrying out of his duties under this contract. 4. The client shall give his decisions on all sketches, drawings, reports, recommendations and other matters properly referred to him for decision by the industrial architect in such reasonable time as not to delay or disrupt the performance by the industrial architect of his services under this contract.	

EXAMPLE III	ADDITIONS	SOURCE
		Ex.I 6.1+2 ID/WG.400/2
		EX.I 6.3,4,5, 6,7,8+9. FIDIC

HEADINGS	EXAMPLE I	EXAMPLE II
	5. The client shall facilitate the timely granting to the industrial architect and any of his personnel and, where applicable, their dependents, in respect of the country where the works are to be carried out, of: - necessary visas, licences, permits and customs clearance for entry and exit; - unobstructed access to all sites and locations involved in carrying out the services; - the privilege of bringing into the country reasonable amounts of foreign currency for the purpose of the services or for the personal use of such personnel and of withdrawing any such amounts as may be earned therein by such personnel in the execution of the services; - an authorization from the country's Central Bank or other appropriate authority that the foreign exchange component of the remuneration under this contract shall be allowed to be transferred to the industrial architect's home country; - repatriation in the event of emergencies. 6. The client will facilitate the clearance through customs of any equipment, materials and supplies required for the services and of the personal effects of the industrial architect's personnel. 7. Except where exemptions have been arranged, the client shall compensate the industrial engineer for all the unrecovered cost of any taxes, duties, levies and other impositions under the laws and regulations in the country where the works are being carried out in respect of: - any payments made to the industrial architect or the personnel he brings from other countries for the purpose of carrying out the services; - any equipment, materials and supplies brought into the country for the purpose of carrying out the services and which, after having been brought into the country, will be subsequently withdrawn therefrom;	

EXAMPLE III	ADDITIONS	SOURCE

HEADINGS	EXAMPLE I	EXAMPLE II
	- any property brought into the country by the industrial architect or his personnel for their use or consumption which, after having been brought into the country will, if not consumed, be subsequently withdrawn therefrom upon the departure of the industrial architect and his personnel; - any stamp and other duties payable on documents.	
	8.(a) The client shall make available, free of charge, to the industrial architect and his personnel, for the purpose of the services, the equipment and facilities described in Appendix ....of this contract.	
	(b) In the event that the industrial architect is delayed in obtaining the equipment and/or facilities set forth in the said Appendix.... , he shall notify the client of such delay and shall be entitled to an appropriate time extension and proportional remuneration for completion of services.	
	(c) If the anticipated equipment and facilities are not forthcoming the client and the industrial architect shall agree on how the affected part of the services shall be carried out and upon a revised remuneration therefore.	
	9.(a) The client will, in conjunction with the industrial architect, arrange for the selection and provision of counterpart personnel when required. Counterpart personnel will be trained by and work under the exclusive direction of the industrial architect.	6.9(a) The client will, in conjunction with the industrial architect, arrange for the selection and provision of counterpart personnel, in a number equal to % of the total staff required by the industrial architect.
	(b) In the event that any member of the counterpart personnel fails to perform adequately the work assigned to him/her by the industrial architect, provided such work assignment is consistent with the position occupied by the staff member, the industrial architect may request that hebe replaced and such request shall not be unreasonably refused.	
	(c) If counterpart personnel is not provided in accordance with this agreement, the client and the industrial architect shall agree on how the affected part of the services will be carried out and upon a revised compensation therefor.	

EXAMPLE III	ADDITIONS	SOURCE

HEADINGS		EXAMPLE I	EXAMPLE II
		(d) The client shall save harmless the industrial architect from any losses or claims resulting from a failure of others to provide the services to be arranged by the client in accordance with this sub-paragraph.	
PERSONNEL	7. N.	1. Save as otherwise provided in this contract, the industrial architect shall provide all necessary site staff and shall be liable therefor. Their qualifications and terms of service shall be subject to the approval of the client, which approval shall not be unreasonably withheld. 2. Should it become necessary to replace any member of the site staff during his contracted term, the industrial architect shall forthwith arrange for such replacement with a person of comparable experience. The person requesting the replacement shall be responsible for the financial consequences thereof except in cases when the client has requested the replacement for reasons of misconduct, inability to perform or violation of laws. All such requests, for whatever reason, must be presented in writing with the particular reason stated. 3.(a) The industrial architect may, from time to time, in writing delegate to his representative any of the powers and authorities vested in him and shall furnish the client and the contractors with a copy of all such written delegations of powers and authorities; (b) Any instruction or approval given by the industrial architect's representative, within the terms of such delegation but not otherwise, shall bind the client and the contractors as though it had been given by the industrial architect. Provided always that: - failure by the industrial architect's representative to disapprove any work or materials shall not prejudice the power of the industrial architect thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof;	

EXAMPLE III	ADDITIONS	SOURCE
		Ex. I 7.1.2 FIDIC
		Ex.I 7.3 FIDIC 1977

HEADINGS	EXAMPLE I	EXAMPLE II
	- if the contractors are dissatisfied by any decision of the industrial architect's representative they shall be entitled to refer the matter to the industrial architect who shall there upon confirm, reverse or very such decision. (c) The industrial architect's representative shall be responsible to the industrial architect and, within the terms of the delegation to him, his duties shall be those of the industrial architect save that he shall have no authority to order any work involving delay or any extra payment by the client, nor to make any variation of or in the works. 4. The counterpart personnel assigned to participate in the services under subparagraph 8 of Clause 6 shall be remunerated by the client. The said counterpart staff may not be removed or replaced except by the client acting in consultation with the industrial architect. In all other respects such staff shall be subject to the administrative direction and supervision of the industrial architect. Not withstanding the appointment of such staff by the client, the industrial architect shall, at all times, retain full and unservable responsibility for the due performance of his obligations hereunder and for the satisfactory completion of the services. The industrial architect accepts liability for the services of the said counterpart staff. 5. The client's individual experts, if any, assigned to participate in the services referred to at Clause 6, subparagraph 10 shall only be appointed with the agreement of the industrial architect and shall be remunerated by the client. These experts may not be removed or replaced except by the client acting in consultation with the industrial architect. In all other respects such persons shall be subject to the administrative direction and supervision of the industrial architect. Nothwitstanding the appointment of such persons by the client, the industrial architect shall at all times retain full and unservable responsibility for the due performance of his obligations hereunder and for the satisfactory completion of services.	

EXAMPLE III	ADDITIONS	SOURCE
		Ex 1 7.4.5 FIDIC

HEADINGS	EXAMPLE I	EXAMPLE II
	The client shall be liable for these experts' errors and/or omissions save in those cases in which the industrial architect has accepted liability. The names of those experts for whom the industrial architect has accepted liability appear in Annex...of this contract.	
INDUSTRIAL ARCHITECT'S FAILURE TO PERFORM N	8.1 The client shall notify the industrial architect in writing if he considers that the industrial architect is not discharging his obligations under this agreement, stating the reasons thereof. In the event that the industrial architect does not respond to such notice within ... days the client may deem the contract terminated. Such termination will not prejudice or affect the accrued rights, claims or liabilities of either party to this agreement. In the event of such termination the industrial architect shall be entitled to receive the remuneration due for the services rendered up to the date of notification of default together with reimbursement in full for such of the costs and expenses as shall have been properly incurred by him prior to the date of notification of default. The industrial architect shall, however, remain liable to the client in damages for any default.	8.4(a) Should the client anticipate a delay in the industrial architect's performance of the services, the client may require the industrial architect to perform his obligations without delay and may insist that the industrial architect expend greater time effort in the carrying out of services, without the right to nal remuneration. If the industrial architect delays in the performance of the services, the industrial architect will be liable to pay to the client compensation and damages for any loss or damage suffered by the latter by reason of the delay. (b) Should the industrial architect totally fail to perform the services, he will be liable to pay to the client compensation and damages for any loss or damage sustained by the client. (c) Should the industrial architect fail to perform some of the services or should the services be rendered in a defective manner, the client may require the industrial architect to complete the said services or to correct the said defective performance within ... days of his written notification of default. Should the said unperformed services or defective services be impossible to remedy or if the industrial architect fails to remedy them within the time allowed thereof he shall pay compensation and damages for any loss or damage suffered by the client by reason thereof. (d) In all cases, if the industrial architect fails to remedy any defect or delay in the performance of the services within the times allotted therefor, or if there is a failure in the industrial architect's performance of the services, the client may terminate this contract.

EXAMPLE III	ADDITIONS	SOURCE
8.1(a) Should the client anticipate a delay in the industrial architect's performance of the services, the client may require the industrial architect to perform his obligations without delay and may insist that the industrial architect expend greater time and effort in the carrying out of the services, without the right to additional remuneration. If the industrial architect delays in the performance of the services, the industrial architect will be liable to pay to the client liquidated damages as hereinafter specified.		EX I 8 FIDIC EX II + III 8.1 ECE/145

HEADINGS	EXAMPLE I	EXAMPLE II
		Such termination will not release the industrial architect from his obligation to pay compensation and damages to the client for any loss or damage sustained by the letter. In the event of such termination the industrial architect will be entitled to receive the remuneration due for the services properly rendered up to the date of notification of default together with reimbursement in full for such costs and expenses as shall have been properly incurred by him prior to the notification of default provided that the client shall be entitled to set off against such remuneration, costs and expenses any compensation and damages due from the industrial architect to the client arising by reason of the industrial architect's default.
	2. Not withstanding anything herein contained to the contrary, the client shall indemnify and save harmless the industrial architect for and against any and all claims, damages, expenses or costs (including those asserted by third parties) directly or indirectly related to the services to the extent that such claims, damages, expenses and costs exceed in total the industrial architect's remuneration for the services (OR ....% of the industrial architect's total remuneration). This indemnity shall not apply in cases where such claims, damages and expenses arise from gross negligence or criminal action by the industrial architect or to any claims, damages or expenses arising out of the violation of legal provisions or rights of third parties in respect of patents and/or copyrights introduced into documents prepared by the industrial architect.	2. Where the industrial architect is liable to pay to the client compensation and damages for loss and damage suffered by the client by reason of the industrial architect's default in the rendering of the services, such compensation and damages shall not exceed the damage which the industrial architect could reasonably have foreseen at the time of the formation of the contract. The client shall be under a duty to take all necessary measures to minimize the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the industrial architect may claim a reduction in the compensation and damages.

EXAMPLE III	ADDITIONS	SOURCE
2. Save as hereinafter provided, where the industrial architect is liable to pay to the client compensation and damages for loss and damage suffered by the client by reason of the industrial architect's default in the rendering of the services such compensation and damages shall not exceed the damage which the industrial architect could reasonably have forseen at the time of the formation of the contract. The client shall be under a duty to minimize the loss which has occurred provided he can do so without unreasonable inconvenience or cost. Should he fail to do so, the industrial architect may claim a reduction in the compensation and damages. This subparagraph shall be subject to the following:		EX II 8.2 ECE/188 EX III 8.2 ECE/145
If the industrial architect fails to perform the services within the time periods allowed under this contract the client shall, without prejudice to his other remedies under this contract, deduct from the remuneration of the industrial architect and any reimbursable costs and expenses, as liquidated damages, a sum equivalent to ...% of the industrial architect's weekly remuneration for each week of delay until actual performance up to a maximum deduction of...% of the total remuneration payable to the industrial architect under this contract. Once the maximum has been reached, the client may consider termination of the contract.		

HEADINGS	EXAMPLE I	EXAMPLE II
LIMITATION OF INDUSTRIAL ARCHITECT'S LIABILITY O	9.1. The industrial architect is not liable for any part of the works not designed by him or under his responsibility save for any loss or damage resulting from decisions taken and/or directions given by him in the course of his performance of the services. 2. The industrial architect is not liable for any loss or damage resulting from any act of the client or the contractors which is not covered by the services to be performed by him or his instructions or advice.	
CLIENT'S FAILURE TO PERFORM N	10. 1. The industrial architect shall notify the client in writing if he considers that the client is not discharging his obligations under this contract, stating the reasons therefore. In the event that the client does not respond to such notice within ... days the industrial architect may, save as hereinafter provided, deem the contract terminated and any delay in the performance of the services by the industrial architect resulting from the client's said default shall be deemed not the fault of the industrial architect. Such termination will not prejudice or affect the accrued rights, claims or liabilities of either party to this contract. The client will be liable to pay to the industrial architect compensation for any loss or damage sustained by the industrial architect by reason of the client's default. 2. Amounts due to the industrial architect from the client shall be paid promptly in accordance with this contract. Should the client fail to pay to the industrial architect any sum due under this contract within ... days of the due date the client shall pay interest at a rate of .. % per annum for each month in which such payment is not made as and from the date of receipt of the invoice therefore.	

EXAMPLE III	ADDITIONS	SOURCE
The "weekly remuneration" of the industrial architect shall be calculated by dividing the total remuneration payable to him by the number of weekly provided by this contract for the performance of the services.		EX I 9 FIDIC
		EX I 10.1 ECE/145
		EX I 10.2 FIDIC

HEADINGS	EXAMPLE I	EXAMPLE II
	Such termination will not prejudice or affect the accrued rights, claims or liabilities of either party to this contract.	
FORCE MAJEURE R	11.1. Neither party shall be liable for his failure to perform any of his obligations under this contract if such failure is due to an impediment beyond that party's control, occurring after the entry into force of the contract and which he could not reasonably have been expected to take into account at the time of the conclusion of this contract, or have avoided or overcome it or its consequences. 2. The party invoking this Clause must promtly notify the other party in writing of the impediment, its affect on his ability to perform and of its cessation. If such notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt in accordance with this contract. 3. If the party's failure is due to the failure by a third party whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if: - he is exempt under sub-paragraph 1 of this , and - the person whom he has so engaged would be so exempt if the provisions of that sub-paragraph were applied to 4. Should the performance of either party's obligations under this contract have been postponed under this Clause for a period in excess of ... months, either party may terminate this contract by giving written notification thereof to the other party. Such termination will not prejudice or affect the rights, claims or liabilities of either party accrued up to the time of the occurrence of the impediment.	11. The industrial architect shall promtly notify the client in writing of any situation or event arising circumstances beyond his control and which he could not reasonably foresee which makes it impossible for the industrial architect to carry out in whole or in part his obligations under this contract. Upon the occurrence of such a situation or event the services shall be deemed to be postponed for a period equal to that caused by the force majeure and a reasonable period, not exceeding one month to remobilize for the continuation of the services. The industrial architect may, by written notice to the client, terminate this contract if the services have been postponed pursuant to the above subparagraph for a period in excess of six months. Should the industrial architect be an individual person and, for any reason beyond his control and which he could not reasonably have foreseen and for which he is not responsible, be unable to perform his obligations under this contract, or have it performed entirely, this contract will terminate without prejudice to the accrued rights of either party against the other. The client shall in that case pay the industrial architect or his successors and assigns upon the surrender of the documents necessary for the continuation of the services, in so far as they are available, such part of the remuneration under this contract, including any reimbursable costs and those termination costs (if any) insuring for the industrial architect or his successors and assigns from contracts already entered into in respect of this contract.

EXAMPLE III	ADDITIONS	SOURCE
		EX I 11 ECE/145 + A/CONF.97/18
		EX II 11 FIDIC

HEADINGS	EXAMPLE I	EXAMPLE II
ALTERATIONS R	12.1. Should circumstances arise which call for modifications of this contract these may be made by mutual consent, given in writing. Proposals in this respect from one party shall be given due consideration by the other party. 2. If in the country in which the project is being carried out there should occur, subsequent to the date of this contract, changes to any national or state statute, ordinance, decree or other law or any regulation or bye - law which causes additional or decreased cost to the industrial architect in the performance of his services, such additional or reduced cost shall be paid by or credited to the client and the agreed remuneration adjusted accordingly.	
REMUNERATION OF THE INDUSTRIAL ARCHITECT N	13.1. The client shall remunerate the industrial architect in respect of the services in accordance with the conditions set forth in Appendix...of this Contract. 2. Amounts due to the industrial architect shall be paid promptly. If the client fails to pay the industrial architect he shall be liable as herein before specified. 3. If any item or part of an item of an invoice furnished by the industrial architect is disputed or subject to question by the client, the payment by the client of that part of the invoice which is not contested shall not be withheld on those grounds and the provisions of subparagraph 2 of Clause 10 of this contract shall apply to such remainder and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to the industrial architect and interest at the rate herein before specified shall be paid on all disputed amounts finally determined payable to the industrial architect. 4. All payments made to the industrial architect on account of foreign exchange costs shall be available for repatriation by the industrial architect as herein before set out. 5. Whenever it shall be necessary to evaluate one currency in terms of another for the purpose of the payment of an amount to the industrial architect, the rate of exchange applicable shall be the selling rate published by an official source in the country where the services are being carried out on the date the payment is due.	

EXAMPLE III	ADDITIONS	SOURCE
		Ex I 12 FIDIC
		EX I 13 FIDIC
	Add I The only cost reimurseable to the industrial architect are those set out in Appendix ...of this contract.	Add I. 13 ECE/145
	Add II The client may nominate a firm of accountants to audit all amounts claimed by the industrial architect. Advance written notice must be given to the industrial architect by the client or the firm of accountants of such audit which shall be carried out during normal working hours at the place where the records are maintained.	Add II 13 ECE/145
	Add III The client shall be entitled to set off against any sums due by him to the industrial architect, any amounts by way of reimbursements, damages or liquidated damages due from the industrial architect to him.	Add III 13

HEADINGS		EXAMPLE I	EXAMPLE II
PERFORMANCE SECURITY	O	14. The industrial architect shall furnish performance security to the client in the amount of . The proceeds of the said security shall be payable to the client as compensation for any damage or loss resulting from the industrial architect's failure to complete his obligations under this contract. The performance security shall be denominated in the currency of the client in a freely convertible currency acceptable to the client and shall be in one of the following forms: - A bank guarantee or irrevocable Letter of Credit, issued by a bank located in the client's country or abroad acceptable to the client, and in the form acceptable to the client. - A cashier's cheque, certified cheque or cash. The performance security will be discharged by the client not later than ...days following the date of completion of the industrial architect's obligations under this contract.	15.
INSURANCE	R	15. The industrial architect will obtain and maintain, from the date of commencement of the services, at his/her own expense, insurance in respect of the following: (a) professional insurance covering his/her own work ; (b) insurance against loss of or damage to the equipment used in the execution of his/her duties ; (c) insurance covering sickness or industrial accidents affecting the site staff ; (d) third party liability insurance including the client and any employee of the client, for damage due to death, personal injury, or property damage resulting from the performance of the contract.	Unless notice is given in writing to the contrary by the client, the industrial architect shall, at the client's expense, take out and maintain, on terms and conditions approved by the client , insurance against third party liability and against loss of or damage to equipment purchased with funds provided by the client for the sole use of the industrial architect in execution of the services, provided that the industrial architect shall use his best efforts to maintain at his own cost, reasonable professional liability cover.
ASSIGNMENT	R	16. The industrial architect shall not, without the written consent of the client, assign the benefits, other than the assignment of any monies due or to become due under this contract. The industrial architect shall not, without the written consent of the client, in any way assign or transfer his obligations under this contract or any part thereof.	

EXAMPLE III	ADDITIONS	SOURCE
		EX I 14. ADB/I-ADB/WB
	Within···· days of the entry into force of this contract the client shall furnish to the industrial architect a bank guarantee of payment in the amount of .... issued by a bank acceptable to the industrial architect.	Add 14 ECE/145
		EX I 15 ECE/145
		EX II 15 FIDIC
		EX I 16 FIDIC

HEADINGS		EXAMPLE I	EXAMPLE II
SUB-CONTRACTING	O	17. Any sub-contract or modification or termination thereof relating to the performance of the services by the industrial architect shall be made only with the advance written agreement of the client.	
COPYRIGHT	R	18. The copyright of all design documents prepared by the industrial architect in connection with this contract rests with the industrial architect. The client shall not be entitled either directly or indirectly to make use of these documents for the carrying out of the services other than under the supervision of the industrial architect and/or of any additional or similar services without the prior approval of the industrial architect which shall not be unreasonably withheld. Notwithstanding the above, in the event that the industrial architect is in default under this contract the client shall not be limited nor require the prior approval of the industrial architect in using or providing such documents to other persons to complete the performance of the services.	
POSTPONEMENT AND TERMINATION	R	19.1. In addition to the circumstances herein before specified wherein this contract may be terminated or performance of the services suspended by one or other of the parties, the client may, by written notice to the industrial architect give prior notice of his intention to abandon the services, in whole or in part, or to terminate this contract. The effective date of such termination of this contract shall not be less than_ _ days after receipt of such notice, or such other shorter or longer period as may be agreed between the parties. Upon receipt of such notice the industrial architect shall take immediate steps to bring the services to a close and to reduce expenditure to a minimum. 2. Upon the postponement of the services or termination of this contract under the provisions in that regard contained in this contract and subject to the industrial architect's obligation to reduce expenditure to a minimum as stated in the preceeding sub-paragraph, the industrial architect shall be entitled to receive the remuneration due up to the effective date of postponement or termination and reimbursement in full for such costs reimbursable to him under this contract and legitimately incurred	

EXAMPLE III	ADDITIONS	SOURCE
		EX I 17 FIDIC
		EX I 18 FIDIC
		EX I 19 FIDIC

HEADINGS	EXAMPLE I	EXAMPLE II
	prior to the effective date of such postponement or termination and for all costs incidental to the orderly termination of the services, including return travel of the industrial architect's personnel, their dependents and effects. 3. Termination of this contract, for whatever reason, shall not prejudice or affect the accrued rights or claims and liabilities of either party to this contract.	
END OF CONTRACT R	20.1. This contract shall expire, as circumstances may direct either: - On the date of completion of the parties' respective obligations under this contract, or - on the termination of this contract in accordance with the provisions hereof. 2. The industrial architect's obligations shall be deemed completed when the works have been delivered to the client in accordance with the procedure herein before specified. The client's obligations shall be deemed completed when all payments properly due to the industrial architect have been made by the client. 3. The termination or expiry of this contract shall not prejudice or affect the rights or claims and liabilities of either party to this contract.	
DEATH OF CLIENT O	21. This contract shall not be dissolved by the death or demise of the client. His rights and obligations shall pass to his successors.	

EXAMPLE III	ADDITIONS	SOURCE
	Upon the payment to the industrial architect of the sums due to him on the termination of this contract, for whatever reason, the industrial architect will deliver to the client all completed drawings, specifications and other documents relevant to the services and the project to which the latter are addressed that are in his possession.	Add 19 ECE/145
		EX I 20 ECE/145
		EX I 21 FIDIC

HEADINGS		EXAMPLE I	EXAMPLE II
PARTNERSHIPS	O	22.1. Should the industrial architect be a partnership and at any time take an additional partner or partners he or they shall then be deemed to be included in the expression "industrial architect". 2. Should the industrial architect be a partnership this contract shall not be dissolved by the death or withdrawl of one or more members of the partnership.	
STATUS	O	23. Nothing contained herein shall be construed as establishing or creating a relationship of master and servant or principal and agent save in respect of those matters wherein the parties' relationship is specifically stated to be of one or other kind.	
LANGUAGE	R	24. This contract is drawn in both the .... language and the .... language. The ruling language of this contract is the ..... language. All the documentation relating to the services and the project towards which the latter are directed, whether to be furnished by the client or the industrial architect, shall be so furnished in the ..... language. Any arbitration proceedings taking place under this contract shall be conducted in the ..... language.	
APPLICABLE STANDARDS	R	25. The technical standards to be used in the project to which the services are directed are the highest standards prevailing in the industrial architect's country.	25. The technical standards to be used in the project to which the services are directed are the highest standards prevailing in the client's country. The client shall transmit to the industrial architect copies of the standards and norms applicable in the client's country at the date of the commencement of the services. Further, the client shall keep the industrial architect informed of any changes which may occur in the said standards and norms during the period in which the services are being carried out.

EXAMPLE III	ADDITIONS	SOURCE
		EX I 22 FIDIC
		EX I 23 FIDIC
		EX I 24 ECE/145
		EX I+II 25 ECE/145

HEADINGS		EXAMPLE I	EXAMPLE II
NOTICES	O	26. All notices under this contract will be given in writing and will be deemed to have been given if delivered by one of the following means: - personal delivery to the designated representative of either party - by telex - by telegram - by registered post at the specific designation of the parties as set forth in Annex...of this contract.	
SETTLEMENT OF DISPUTES	N	27.1. Should the parties' disagree over some technical matter then such a disagreement shall be submitted, without delay, to an expert appointed by ..... for the purposes in order to obtain the opinion of the said expert on the said technical disagreement. If the parties are unable to reach agreement after a consideration of the opinion of the technical expert than the following provisions of this Clause shall apply in respect of the said disagreement. The opinion of the technical expert shall be admitted as evidence in any subsequent proceedings. The costs and expenses of obtaining the said opinion of the technical expert shall be borne equally by the parties.	
		2. Any dispute or difference arising out of this contract, including those considered as such by only one of the parties, shall be finally settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.	2. Any dispute or difference arising out of this contract, including those considered as such by only one of the parties, shall be finally settled by arbitration in accordance with the provisions of the Arbitration Rules.
		3. The arbiter's decision shall be final and binding on both parties. The resulting award shall be in lieu of any other remedy. The arbiter will not be of the nationality of either the client or the industrial architect.	
APPLICABLE LAW	N	28. The law of the client's country shall govern this contract and the contract shall be construed in accordance therewith.	28. The law of .....shall govern this contract and the contract shall be construed in accordance therewith.

EXAMPLE III	ADDITIONS	SOURCE
		EX I 26 FIDIC
		EX I 27.1 ECE/145
		EX I+II 27.2.+3, FIDIC
		EX I+II 28 ECE/145 + FIDIC

SOURCES:

FIDIC Guide	Guide to the Use and Remuneration of Independent Consultants for Engineering Services, FIDIC
ID/WG.400/2	Items to be Included in Model Contracts for the Import, Assembly and Manufacture of Agricultural Equipment, Including training; UNIDO, 21 July 1983
FIDIC	International Model Form of Agreement Between Client and Consulting Engineer and International General Rules of Agreement Between Client and Consulting Engineer for Design and Supervision of Construction of Works/IGRA 1979 D+S, FIDIC, 3rd Ed.
ECE/145	Guide for Drawing Up International Contracts on Consulting Engineering, Including Some Related Aspects of Technical Assistance. UN/ECE, 1985.
FIDIC, 1977	Conditions of Contract (International) for Works of Civil Engineering Construction, FIDIC, March 1977
ECE/188	General Conditions for the Erection of Plant and Machinery Abroad, No. 188 UN/ECE, August 1963
A/CONF.97/18	Final Act of the United Nations Conference on Contracts for the International Sale of Goods UN General Assembly, 10 April 1980.

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COMPARISON OF SAMPLE CLAUSES FOR CONTRACTS BETWEEN CLIENTS AND INDUSTRIAL ARCHITECTS FOR THE DESIGN AND SUPERVISION OF THE CONSTRUCTION OF WORKS FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY

Corrigendum

Page 3, second paragraph

The second and third sentences should read

The clause numbers are given in the left hand column. Reference is then made in the right hand column to the "Status" of the clauses considered.

Page 8, column 2, paragraph (b), line 3

For of read by

Page 9, column 2, line 4

Delete such

Page 16, column 2, paragraph (n), line 1

After shall insert determine

Page 22, column 2

Paragraph 4, line 9: after with insert or

line 11: before discharge delete or

Paragraph 6, last line: after this insert contract.

V.85-30519
2412T

Page 34, column 2

Line 6: for very read vary

Paragraph 4, line 14: for unservable read unseverable

Paragraph 5, line 16: for unservable read unseverable

Page 36, column 3

Line 7: after time insert and

Line 10: for nal read additional

Page 38, column 3, line 5

For letter read latter

Page 41, column 1, line 4

For weekly read weeks

Page 42

Column 2, paragraph 3, line 7: after this insert paragraph

Column 3, paragraph 11, line 3: after arising insert from

lines 4 and 5 from the bottom: for insuring read enuring

Page 45, column 2, line 2

For cost reimurseable read costs reimbursable

Page 48, column 2, paragraph 19.1, line 8

For tention read intention